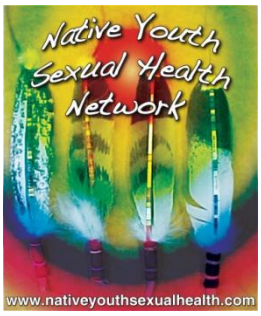

www.nativeyouthsexualhealth.com

Native Youth Sexual Health Network
Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples during official country visit to Canada – October 7 to 15 2013

Introduction

The Native Youth Sexual Health Network (NYSHN) is an organization by and for Indigenous youth that works across issues of sexual and reproductive health, rights and justice throughout the United States and Canada. As an organization that works within an Indigenous human rights framework, issues of sexual and reproductive are understood as directly linked with the right to self-determination, especially over our bodies.

In the last 6 years, we have been involved at the UN level to address Indigenous human rights and justice; including being active members of both the Global Indigenous Youth Caucus (GIYC), and Global Indigenous Women's Caucus (GIWC), making submissions to the Special Rapporteur on the Rights of Indigenous Peoples, attending the Permanent Forum on Indigenous Issues (UNPFII) and Expert Mechanism on Rights of Indigenous Peoples (EMRIP). While we understand that calling for accountability from the Canadian government is an important part of this issue - support for respecting the self-determination and sovereignty of our Indigenous Nations and communities at a grassroots and international level also needs to be prioritized. As we work throughout North America, we also participated in the Special Rapporteur's official country visit to the United States last year in Alaska, and recognize the integral connections between our Nations across colonially imposed borders.

We commend the work done by the previous Special Rapporteur in 2004, highlighting many important realities facing Indigenous peoples in Canada at the time. Unfortunately, many of the recommendations made directly to Canada were ignored, or left unimplemented.

Within this briefing you will find an overview of current and ongoing human rights violations, as well as recommendations and calls to action throughout in the areas of:
-Sexual and reproductive health, rights and justice
-The need for culturally safe health care and services

-Indigenous youth, women and HIV
-Indigenous Peoples and the criminal justice system, incarceration and issues of criminalization
-Indigenous Two Spirit, LGBTTQQIA and Gender non-conforming Youth
-Suicide and Indigenous youth
-Environmental and reproductive justice, extractive industries and environmental violence

These areas covered in our submission represent intersecting issues that require the immediate attention of the Canadian government, as well as the support of action from the United Nations.

Cultural Safety in Sexual and Reproductive Health

Cultural safety "is focused on the understanding of 'self' as a cultural bearer; the historical, social and political influences on health; and the development of relationships that engender trust and respect"[1]. As an organization that works within the full spectrum of sexual and reproductive health, we know that culturally safe services, programs and education are at the core to creating healthy Indigenous communities. When our self-determination is respected, and we have the resources needed to back these initiatives, our communities flourish.

A partner initiative, Konon:kwe Council (Akwesasne) is a successful model as a women-led community-based organization that exists to reconstruct the power of our origins through collaborative approaches to the care, empowerment, and transformation of a traumatized indigenous community[2]. Konon:kwe Council models a practice of restoration, reclamation and community health that is culturally safe. This practice is what makes for successful violence prevention work in their community.

In our work by and for Indigenous youth, cultural safety is also critical to recognizing our unique identities, experiences and intersections of physical, spiritual, mental and emotional health. What we continue to face within the mainstream public health system is racism and a lack of sensitivity to who we are as Indigenous peoples. These experiences deliberately ignore and often erase the important healing that needs to happen for us as Indigenous youth.

While there are significant efforts being driven by Indigenous communities to increase cultural safety, the options for Indigenous youth continue to be insufficient. Without cultural safety "...discrimination and racism can make it unsafe for Aboriginal people to use the health care system, which reduces opportunities for early intervention and prevention of health problems" (Health Council of Canada, 2012, pg. 9).

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[1] Nursing Council of New Zealand. (2011). Guidelines for Cultural Safety, the Treaty of Waitangi and Maori Health in Nursing Education and Practice.
[2] Konon:kwe Council. http://www.kononkwe.com/index.html

Indigenous Peoples who are incarcerated continue to face barriers to access to ceremony. Indigenous Peoples are often housed in systems (jails, foster care, transitional housing, etc) that do not have culturally safe supports and create additional trauma. It is critical that these systems not only have access to safer sex and harm reduction materials (syringes), but also allow for the use of medicines used for ceremony (ie. tobacco).

Indigenous youth themselves do not see these issues in silos or separate from one another, and given accessible opportunities, are able to articulate the links they see to colonization, racism and the violation of the rights of Indigenous peoples. Over the last 5 years, NYSHN with our research and communities partners have been asking Indigenous youth across Canada to unpack the links between structural inequalities, individual HIV risk and Indigenous cultures. This means creating artwork, community conversations, workshops and reports about colonization, racism, assimilation, isolation, residential school system legacies, healthy sexuality and HIV/AIDS, Indigenous cultural knowledge and traditions.

Their analysis below outlines why HIV is not just an individual health issue, but a human rights issue that Canada is refusing to take responsibility for, or take action on even when explicitly directed by Indigenous peoples.

A shared legacy of colonization

HIV follows patterns of inequity[3][4]. Globally, Indigenous peoples are more likely to be economically disadvantaged, displaced from their lands or live in rural locations, have lower educational attainment and poorer health outcomes than their non-Indigenous counterpart[5]. Locally, these outcomes can be linked directly to historical and ongoing systemic oppression. Factors facing Aboriginal peoples in Canada that put them at risk for HIV include racism, assimilation, the legacies of the residential schools, persistent economic inequality and cultural and social isolation[6][7][8]. As a result, Aboriginal peoples

[3] Farmer, P., M. Connors, and J. Simmons, eds. Women, poverty, and AIDS: Sex, drugs, and structural violence. 1996, Common Courage Press, 1996: Monroe, ME.
[4] Travers, R., C. Leaver, and A. McClelland, Assessing HIV vulnerability among lesbian, gay, bisexual, transgender, transsexual (LGBT) and 2-spirited youth who migrate to Toronto. The Canadian Journal of Infectious Diseases, 2002. 13(Supplement A).
[5] Farrel, R., Terborgh. Reaching Indigenous Youth with Reproductive Health Information and Services. 1999
[5]06/30/07]; Available from:
http://www.fhi.org/en/Youth/YouthNet/Publications/FOCUS/InFOCUS/
[5]indigenousinfoservices.htm.
[6] Leis, G., HIV Prevention from Indigenous Youth Perspectives 2006, University of Victoria.
[7] Hampton, M., et al., Building Research Partnerships to Strengthen Sexual Health of Aboriginal Youth in
[7]Canada. The Australian Community Psychologist, 2007. 19(1).

> are disproportionately affected by many factors that increase their vulnerability to HIV infection, including higher rates of substance abuse, sexual and physical violence, sexually transmitted infections, and limited access to, or use of, health care services[9]. While most HIV prevention approaches tend to focus on individual behaviours, an active engagement with the social, political and historical determinants of health (e.g. colonialism) that shape these behaviours may be crucial to reaching Aboriginal youth[10] (Taking Action, 2011)

Acknowledgement of this issue alone does not change the reality; it requires strategic planning and direct action. Another one of our partners, the National Aboriginal Youth Council on HIV/AIDS (NAYCHA) did just that, outlining a strategic plan[11] to address HIV amongst Indigenous youth with specific actions and recommendations. While this is clear example of Indigenous peoples exerting their rights as outlined in Article 23 of the UNDRIP, the Canadian Government has chosen to ignore these recommendations.

Even more alarmingly, in 2004 the Special Rapporteur recommended that "emergency measures" be taken to address the rates of HIV and AIDS. However, the situation continues to worsen and instead of supporting community based responses, the Federal Government of Canada actually cut health funding to National Aboriginal Organizations and their health departments. This was essential work being done for all First Nations, Inuit and Métis communities in partnership with many organizations such as ours and was deemed unnecessary by Canada. Article 23 of the UNDRIP states that Indigenous peoples have the right to determine our own development priorities and administer them through our own institutions. However, this decision was imposed on Indigenous organizations by the Canadian government. This work included sexual health toolkits for young people that we at NYSHN co-authored, policy documentation, and the first and only Métis specific health organization, which was housed within the National Aboriginal Health Organization (NAHO) whose mandate was also terminated.

Indigenous Youth, Women and HIV

As outlined in Article 22 of the UNDRIP, HIV Positive Aboriginal Women, just like all Indigenous peoples, have the right to enjoy the full protection and guarantees against all forms of

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[8] Majumdar, B.B., T.L. Chambers, and J. Roberts, Community-Based, Culturally Sensitive HIV/AIDS Education for Aboriginal Adolescents: Implications for Nursing Practice. Journal Of Transcultural Nursing, 2004. 15(1): p.69-73.

[9] Calzavara, L.M., et al., Condom use among Aboriginal people in Ontario, Canada. International Journal of STD & AIDS, 1998. 9(5): p. 272-279.

[10] CAAN, HIV Prevention Messages for Canadian Aboriginal Youth. 2004: Ottawa.

[11] CAAN. (2010). National Aboriginal Youth Strategy on HIV and AIDS in Canada. http://www.caan.ca/national-aboriginal-strategies/national-aboriginal-youth-strategy-on-hiv-and-aids/.

violence and discrimination. However, due to their positive HIV status, the rights inherent to Indigenous peoples as outlined in the UNDRIP are often violated through negligence and outright discrimination by the Canadian state.

Indigenous women living with HIV continue to bring attention to the need for culturally competent and safe care, as most of the racism they experience comes from the health care system. They also face discrimination from the child welfare system, and barriers to employment. These issues are common to people living with HIV and are compounded by the racism experienced by Indigenous peoples in Canada. Indigenous women living with HIV often have to leave home communities, particularly remote and northern reserves, to seek appropriate medical treatment, in violation of Article 24(2). This impacts not only individuals but everyone affected by HIV, our families, communities and Nations.

It is important to note here that HIV and AIDS are not just issues of sexual health for Indigenous peoples; in fact the primary method of transmission is injection drug use. Unfortunately the Government of Canada takes an outright anti-harm reduction approach, violating the right to health for people who inject drugs by denying basic evidence-based health care and repeatedly attempting to shut down Insite, the only safe-injection and consumption site in Canada.[12]

Injection drug use is the main category of HIV exposure for Aboriginal people.

> In 2005, 53% of HIV cases among Aboriginal people were caused by injection drug use; 33% by heterosexual sex; 10% by men who have sex with men; and 3% by men who have sex with men/injection drug use. (PHAC)

In particular, Indigenous youth in Canada are facing the brunt of health care neglect. Without proper treatment, care and support, HIV can develop into AIDS, a very serious and preventable disease. With the stigma and discrimination faced by people living with HIV, it is extremely difficult for young people especially to access non-judgmental treatment again compounded by racism.

Aboriginal people are diagnosed at a younger age than other Canadians.

Between 1979 and 2008, 19.3% or reported AIDS cases among Aboriginal people were between 15 and 29 years old, compared with 14.8% of reported AIDS cases among non-Aboriginal people in the same group. (PHAC, HIV/AIDS Epi Update, July 2010).

HIV affects Aboriginal women at higher rates than non-Aboriginal women.

[12] The Harper Government Has No Insite on Canadians with Addictions
http://www.huffingtonpost.ca/dyanoosh-youssefi/insite-supreme-court_b_3404292.html

> Between 1998 and 2008 Aboriginal women represented 48.8% of all the HIV test reports within the Aboriginal HIV and AIDS statistics as compared with 20.6% of reports among those of other ethnicities. (Public Health Agency of Canada's HIV/AIDS Epidemiological Surveillance Report – July 2012)

Indigenous peoples know what the solutions are to these issues, and organizations like NYSHN in partnership with the Canadian Aboriginal AIDS Network are working towards them. It is important that the self-determination of Indigenous peoples over our health and well being be taken seriously by Canada, and that community driven responses are supported instead of controlled or limited.

Indigenous Peoples and the Criminal Justice System, Incarceration and issues of criminalization

The Case for Prison Needle and Syringe Programs in Canada

On September 25, 2012, Steven Simons, a former prisoner, the Canadian HIV/AIDS Legal Network, Prisoners with HIV/AIDS Support Action Network (PASAN), CATIE and our partners at the Canadian Aboriginal AIDS Network (CAAN) launched a lawsuit[13] against the Government of Canada over its failure to make sterile injection equipment available to federal prisoners and prevent the spread of HIV and HCV in Canadian federal prisons. With the input of expert witnesses from Canada and beyond, with the support of many of the legal arguments outlined in Clean Switch: The Case for Prison-Based Needle and Syringe Programs, the goal of this lawsuit is to ensure prisoners' access to a key tool in HIV and HCV prevention — and to establish a legal precedent that will be useful in other jurisdictions seeking to ensure the same.

Indigenous Peoples access to prison needle and syringe programs is increasingly an issue that we wish to bring attention to:

> In the minority dissenting judgment in Sauvé, Justice Gonthier did address the issue of the disproportionate representation of Aboriginal people among those incarcerated in Canada, but did not agree that, because denying voting rights to prisoners had the effect of disproportionately adversely affecting Aboriginal people, the courts should therefore recognize prisoner status as an analogous ground. However, the broader range of grounds of discrimination that many prisoners embody was not considered — some of which are particularly relevant to considering the denial of access to health services such as sterile injecting equipment to prisoners. (Clean Switch, pg. 26).

[13] Canadian HIV/AIDS Legal Network. (2009). The Case for Prison Needle and Syringe Programs in Canada. http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1496

Aboriginal people are significantly overrepresented in the Canadian prison system where there is a higher risk of contracting HIV because of the non-existence of harm reduction equipment and services.

> In 2006, 1.64% of people in federal prisons were reported to be HIV positive.
> Aboriginal people make up 20% of the federal prison population.
> Of Canadian female prisoners, Aboriginal women make up 32% of female prisoners.
> Aboriginal men make up 20% of Canadian male prisoners. (Public Health Agency of Canada)

The continued denial of access to prison needle and syringe programs is directly correlated to rates of HIV and AIDS cases rising among Indigenous women and communities. This human rights violation represents a denial of the basic human right set out in article 7 of the UNDRIP which is the right to life, physical and mental integrity, liberty and security of the person.

Indigenous Youth and Incarceration

In relation to the justice system, it was recommended in the 2004 report that measures be taken to reduce and eliminate the overrepresentation of Indigenous men, women and children in detention. However, young Indigenous women are currently the fastest growing prison population in Canada[14]. During a recent legislative attempt at diminishing Indigenous peoples rights through Omnibus bills, changes to the criminal code were also made through Bill C-10 creating mandatory minimum sentences for young people charged with minor offenses. This mean that currently youth labelled as 'young offenders' in Canada are now facing mandatory minimum sentencing as well as stricter and tougher sentences without an increase in community based restorative justice, and in fact cuts to Indigenous cultural practices within correctional services. The criminalization of Indigenous women who use drugs or alcohol is one particular outcome of mandatory minimum sentencing and works against Indigenous responses of harm reduction. Harm reduction would centre the self-determination of Indigenous women by equipping them with tools and education to maintain their health with community supports. The increasing criminalization of Indigenous women who use drugs pushes them into situations where they are away from these supports and into increasing environments of violence. Restorative and community based forms of justice in Indigenous communities, for cross cutting issues are needed.

Additionally, this is in contravention of a previous Supreme Court ruling "Gladue"[15] in Canada that mandated judges taking into account the history of colonization when it came to sentencing Aboriginal people. As outlined by the Correctional Investigator of Canada, in the Spirit Matters:

[14] Elizabeth Fry Society http://www.efryottawa.com/documents/womeninprisonup50.pdf
[15] R. v. Gladue, [1999] 1 S.C.R. 688 http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1695/index.do.

Aboriginal People and the Corrections and Conditional Release Act, the Government of Canada continues to fail in meeting its own legislative agreements[16]. Sound evidence has already been documented that increased criminalization and incarceration do not actually produce more safety and well-being in communities.

Despite another recommendation calling for concerted action to guarantee the right to culturally sensitive and quality education, instead we see the continuation of racist practices inside our schools that marginalize and denigrate Indigenous children, while send them on a negative trajectory. This has been referred to as the "School to prison pipeline" meaning Indigenous children are criminalized in schools more so than their non-Indigenous peers, which leads to earlier involvement in the criminal justice system. This can also happen to youth and children involved in the foster care or child welfare system which offers a similar criminal trajectory[17].

Indigenous Two Spirit, LGBTTQQIA and Gender Non-Conforming Youth

We know from our front-line work in communities that Indigenous youth are increasingly having to move from rural, remote and reserve areas to urban centres. An increasing number of those Indigenous youth who move to urban centres are Two-Spirit, LGBTTIQQA[18]. Many of these Indigenous youth are represented among homeless youth in urban centres (ie. Toronto).

Forgotten Voices: Aboriginal Two-Spirit Youth and Diverse Identities:

> A profile of homelessness in Toronto reveals 20% of the homeless population identifies themselves as Aboriginal. What's more, 15-25% are Aboriginal youth, and 23% of these youth are sexually diverse youth trying to sort out how they see themselves and their identities. Some might be trans*, some might be queer or lesbian, gay, intersex or gender queer. Some might be bisexual or asexual, and others might be two-spirited.

We know that gender based violence disproportionately affects Indigenous women who are part of the Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Questioning and Asexual (LGBTTIQQA) community and that they are often not represented in the data of missing and murdered Indigenous women, or adequate services to prevent violence. Here we refer to a range of gender, sexual and spiritual identities specific to Indigenous peoples that are in the process of being reclaimed and restored within various traditions. It is important to note that youth are often fluid and changing in these definitions, but generally this refers to people who do not fit into a gender binary, or other Western categories of relationships and identities. They may not conform to ideas; assumptions of physical presentations dictated by mainstream culture and as a result

[16] Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act http://www.oci-bec.gc.ca/cnt/comm/presentations/presentations20121022-eng.aspx.
[17] Gebhard, A. (2012). Pipeline to prison: How schools shape a future of incarceration for Indigenous youth. http://briarpatchmagazine.com/articles/view/pipeline-to-prison
[18] http://digitaljournal.com/article/355601

face disproportionate amounts of violence as people react to this non-conformity, sometimes mis-perceived as a threat.

While the collection of data regarding missing and murdered Indigenous women continues, it often does not take into account the rates of missing and murdered Two-Spirit, Trans and gender non-conforming youth. From firsthand knowledge, and our work with youth in communities across Canada we see this violence, sometimes referred to as homophobia and transphobia, manifest in many ways resulting in assault, death, and forced migration.

Suicide

While the 2004 Special Rapporteur report on Canada called for 'long term integrate policies at all levels' to address suicide, this has been the case. A direct example of the extent of this issue comes from the territory of Nishnawbe Aski Nation (NAN) in the province of Ontario, which had 427 completed suicides from 1986-2010. Of the 427, 57 occurred in children 10-14 years of age and 174 occurred in children and youth 15 to 20 years of age. Due to limited number of high schools in the majority of First Nations communities in this area, children ages 13-14 years old must leave their homes to attend high school.This is also due to the inadequate funding formulas provided to First Nations children and youth for education.

Since 2007, this has resulted in the deaths of seven Indigenous children from the NAN region. A resulting inquest produced a report from the Ontario Chief Coroner's stated that these deaths are "uniquely positioned against the backdrop of colonialism, racism and social exclusion arising from histories of residential schools".

By expanding the conversation of the contributing factors about why young people consider suicide, such as the intersecting realities of family violence, resource extraction, gender identities, and rates of sexual assault, we can better understand the context within which suicide happens. Despite the lack of hard research and statistics, NYSHN draws on knowledge from our youth leaders and staff working in community that says the support for young people's mental, spiritual and emotional health that connects with other parts of themselves and their communities is simply inadequate.

As a result of a lack of support from the federal Government, NAN region has decided to take matters into their own hands, conduct their own inquest into the rates of suicides while fundraising for the effort at the same time. While this is a great example of community based organizing, it points towards a lack of empathy from the Federal Government that does not seem to take this issue as a priority. We must also note that non-Indigenous Government controlled programs are often ineffective and insufficient. Indigenous families, communities and Nations must be able to be in control of resources and how they are delegated instead of being limited in scope by regulations that force us to separate issues of health, culture, rights and identity.

Environmental and Reproductive Justice, Extractive Industries and Environmental Violence

For many Indigenous Peoples, the context of understanding gender-based violence while seeking justice is always connected to justice for our lands and bodies. Within all the work we do at NYSHN we use a framework that simultaneously works for both sexual and reproductive health, rights and justice as it seeks for environmental justice.

As a partner organization on the International Indigenous Women's Environmental and Reproductive Health Initiative, we continue to see the impacts of resources extraction and industry in our day to day work on sexual and reproductive health. Within our work across Canada, we see direct impacts of environmental racism that frequently are not addressed by industry. Free, prior and informed consent needs to include the social stressors of environmental violence and its particular effects on Indigenous women, children and those yet unborn.

These social stressors of environmental violence include:
-high rates of sexual, domestic and family violence as well as sexual exploitation in Indigenous communities where extractive industries are taking place, usually accompanied by large numbers of workers from outside the community
-high rates of HIV and other sexually transmitted infections without adequate capacity for response from the health care system (high worker population overwhelming local health care)
-effects of contamination including mercury, uranium and other toxins that continue to affect Indigenous women's reproductive health, their children and generations unborn[19]
-Increasing rates of youth suicide

Free, prior and informed consent and an Indigenous form of the precautionary principle must take into account these social stressors.

Further Recommendations

In addition to the recommendations and calls to action that we have outlined in the above sections based on the current reality of Canadian government inaction and negligence, we recommend the following to be included in the final report of the Special Rapporteur on the Rights of Indigenous peoples. We must also request that passing mentions of "women and youth" are insufficient to capture the nuanced analysis and solutions Indigenous women and youth have been articulating.

[19] Declaration for Health, Life and Defense of our Life, Lands and Future Generations. http://www.nativeyouthsexualhealth.com/july12010.pdf

1. That ‘self determination’ as a right be defined, understood and articulated as applying collectively to Indigenous peoples and our lands, territories, governance as well as physical bodies, health and well-being.
2. Any recommendations made to the Canadian Government highlight the need for resources redirected and reallocation towards Indigenous and community led initiatives and programs that are not administered or controlled by Government.
3. Any and all specific issues mentioned here be thought in a larger structural context that require systemic change and dramatic shift in how Indigenous peoples are fundamentally treated.